



OFFICIAL COMMENT

November 14, 2008

Ms. MaryAnn Stevens
Mail Code 65-40
Rules Section
Office of Water Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204-2251

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IDEM
OFFICE OF
WATER QUALITY

RE: Indianapolis Power and Light Company's Comments – Development of New Rules and Amendments to Rules Concerning Antidegradation Standards and Implementation Procedures– 1st notice #08-764

Ms. Stevens:

Indianapolis Power & Light Company (IPL) appreciates the opportunity to submit comments in regards to the above mentioned draft rule. IPL believes that a constructive antidegradation rule will contain reasonable triggers for review, appropriate exclusions from full review and public notice requirements, and a logical process for obtaining approvals. IPL offers the following recommendations regarding development of appropriate draft rule language for the second notice of comment period:

1. IPL supports an applicability provision that uses a bright-line trigger of only conducting antidegradation review when a discharger is requesting a nonexempt new or increased discharge that requires a new or modified NPDES permit (as initially proposed by the Indiana Water Quality Coalition ("Coalition")). This applicability mechanism will clearly define the rule, be composed of objective factors, and minimize varying interpretation. The rule should clearly establish that antidegradation review is only triggered when a discharge needs a new or increased permit limit. This trigger concept is already covered in 327 IAC 5-2-11.7, the antidegradation procedures for OSRWs in the Great Lakes System. A detailed explanation of the Coalition's position on the applicability of the antidegradation rule, to which IPL supports, was submitted to IDEM on August 12, 2008 and October 15, 2008. In addition, IPL requests that IDEM clarify that the implementation procedures only apply for NPDES permits and are not appropriate for or even applicable to Section 401 and Section 404 approvals. IPL believes that IDEM should separately address antidegradation for Section 401 and 404 approvals. IPL believes that that antidegradation review for Section 401 and 404 approvals should be fulfilled by the terms and conditions imposed by IDEM and the USACE as described as follows:
 - a. Section 401 Water Quality Certification: IDEM regulates activities in lakes, rivers, streams, and wetlands to ensure that those activities maintain the chemical, physical, and biological integrity of these waters. Federal permits or licenses are required to conduct many of these types of operations, including discharging wastewater, altering flow paths, and placing fill materials into wetlands and waterways. The bulk of federal permits requiring Section 401 Water Quality Certification from IDEM are Section 404 Dredge and Fill Permits, which are issued by the U.S. Army Corps of Engineers (Corps). Section 404 of the Clean Water Act establishes programs to regulate the discharge of dredged and fill material into Waters of the United States. Dredge and fill activities are controlled by a permit process administered by the U.S. Army Corps of Engineers and overseen by the Environmental Protection Agency (EPA). This means that any person or company planning to discharge fill materials to Indiana wetlands or other water bodies such as streams, rivers, and lakes by filling, excavating, open-trench cutting, or

mechanical clearing, must receive Section 401 Water Quality Certification authorization from IDEM and must also apply for, and receive, a federal Section 404 Dredge and Fill Permit from the Corps. Furthermore, applicants must demonstrate to IDEM that the impacts and their applications are necessary. If an applicant is unable to completely avoid impacts, they must demonstrate how their proposed project and unavoidable impacts to wetlands and Waters of the U.S. have been minimized. Applicants must provide compensatory mitigation for any remaining adverse impacts to wetlands and other Waters of the U.S. Therefore, IPL believes that the current Section 401 and 404 programs maintain current water quality standards and provide compensatory mitigation in cases where adverse impacts cannot be avoided.

2. The de minimis concept should be based on a quantity of additional pollutant load for which a new or increased permit limit is required and below which antidegradation implementation procedures do not apply. The de minimis procedures should also consider alternate mixing zones for all high quality waters, including OSRWs and EUWs. Furthermore, IDEM should not rely on development of case-by-case DTBELs in support of this rule. This case-by-case evaluation would be extremely time-consuming and of limited value in the application of antidegradation. IPL supports the Coalition and Indiana Manufacturing Association ("IMA") position regarding the de minimis concept. A detailed explanation of the Coalition and IMA's position on the de minimis concept was submitted to IDEM on May 30, 2005 and October 15, 2008.
3. IPL believes that the current draft rule, which defines the terms "unused loading capacity" and "total loading capacity" to define de minimis, is the appropriate terminology to clearly define the de minimis concept. IPL urges IDEM to continue to use the unused and total loading capacity terms and do not use the term "assimilative capacity". Furthermore, IPL supports the Coalition and IMA's position regarding this issue. Detailed information associated with the above terminology was submitted by the Coalition and IMA to IDEM on October 15, 2008 (Attachment 5).
4. IPL supports a rule which exempts certain activities from full antidegradation review. IPL believes that full antidegradation review should only be required for projects that will result in a significant lowering of water quality. IPL supports the list of exemptions in the current draft rule, and believes the following activities should also be included in the exemptions list:
 - a. Air Pollution Controls: New or increased wastewater discharges necessary to achieve reductions in air emissions should be exempted from antidegradation demonstration or streamlined review. IPL supports making the air pollution controls provision an exemption for several reasons:
 - i. Any new wastewater loadings are the result of federally required air pollution controls, and are therefore "necessary to accommodate important economic or social development".
 - ii. It may be very challenging for IDEM to perform technology review because the assessment of many advanced wastewater treatment technologies for air scrubbers, including flue gas desulfurization (FGD), is very complex. To support this statement, currently utilities and U.S. EPA are struggling to develop appropriately based effluent guidelines. In U.S. EPA's recent announcement that it is delaying revision of the steam electric power generating effluent guidelines, the agency stated that one of the reasons for the delay is because U.S. EPA wants to investigate plants which have recently began operating a new generation of FGS wastewater treatment technology that may achieve substantially better pollutant reductions than EPA has evaluated to date.
 - iii. Exempting air pollution controls is consistent with the current antidegradation rule (327 IAC 5-2-11.3(b) (1) (C) (iii) (KK)).

In addition, IPL believes that a 30 day public notice period associated with exemption activities is not a necessary step in the permit process because these types of activities have already been determined by IDEM to have no significant lowering of water quality. Furthermore, the determination made by IDEM that these types of activities do not have a significant lowering of water quality is currently undergoing a public review period via the current rulemaking process. Therefore, IPL believes that an additional 30 day public notice period through a permit modification process serves no additional purpose.

- b. Variances: Discharges that have been granted variances by IDEM and/or U.S. EPA should be

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exempted from the antidegradation review process because the application and review process associated with obtaining a variance is similar to the antidegradation demonstration and review process.

- c. Non-Storm Water Discharges covered under individual NPDES permits: In the September 29, 2008, Federal Register, EPA issued a Notice of Availability for the new NPDES Multi-Sector General Permit (the "2008 MSGP") which replaces the 2000 MSGP (73 Fed. Reg. 56,572). Like the 2000 MSGP, the 2008 MSGP authorizes certain non-stormwater discharges. The non-stormwater discharges authorized by the 2008 MSGP are: discharges from fire-fighting activities; fire hydrant flushings; potable water, including water line flushings; uncontaminated condensate from air conditioners, coolers, and other compressors and from the outside storage of refrigerated gases or liquids; irrigation drainage; landscape watering provided all pesticides, herbicides, and fertilizer have been applied in accordance with the approved labeling; pavement wash waters where no detergents are used and no spills or leaks of toxic or hazardous materials have occurred (unless all spilled material has been removed); routine external building washdown that does not use detergents; uncontaminated ground water or spring water; foundation or footing drains where flows are not contaminated with process materials; and incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of the facility, but not intentional discharges from the cooling towers (e.g., "piped" cooling tower blowdown or drains). Because the 2008 MSGP, like the 2000 MSGP before it, specifically allows these non-stormwater discharges to be discharged from stormwater outfalls, IPL believes that these non-stormwater discharges should be exempted from the antidegradation process as these discharges do not contribute to a significant lowering of water quality.
- d. General Permits: IPL believes that IDEM should clearly address antidegradation review of each general permit rule to ensure that specific activities qualifying for a general permit do not need to go through individual antidegradation review.

- 5. IPL urges IDEM to continue to seek input from the technical workgroup that has been established by IDEM during this rulemaking process. In addition, IPL urges IDEM to decide and clearly express its decisions at the time that the workgroup discusses each of the key issues concerning the antidegradation review process. This will ensure that the agency has the essential administrative record to justify the final rule to U.S. EPA and others that may seek review of the rule.

IPL appreciates IDEM's consideration of these comments associated with the development of the draft rule language concerning Indiana's antidegradation standards and implementation procedures. If you have any questions, please feel free to contact me at 317/261-5473.

Best Regards,



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Enclosure